November 1, 2022

Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: Environmental, Social, and Governance Disclosures for Investment Advisers and Investment Companies (File No: S7-17-22)

Dear Ms. Countryman,

Cboe Global Markets ("Cboe") appreciates the opportunity to provide comments on the Securities and Exchange Commission's ("SEC" or "Commission") Notice of Proposed Rulemaking on Enhanced Disclosures by Certain Investment Advisers and Investment Companies related to Environmental, Social, and Governance Investment Practices (the "Proposal").

Cboe supports the ability of investors to access consistent, comparable, reliable, and *material* ESG information to enable investors to make informed investment decisions. While some form of general classification may aid efforts to provide useful information to investors, many commenters have raised concerns with respect to the complexity and potential unintended consequences of the Proposal. Those concerns deserve serious consideration. Our comments are limited to the Proposal's treatment of derivatives and also deserve a closer review.[1]

The Proposal would require an ESG-Focused Fund (as defined in the Proposal) that considers environmental factors as part of its investment strategy to disclose the carbon footprint and the weighted average carbon intensity ("WACI") of the fund's "portfolio company", the core definition of which is "an issuer that is engaged in or operates a business or activity that generates GHG emissions." The Commission specifically notes that the definition of a portfolio company "is designed to identify companies engaged in business activities that generate GHG emissions." Based on this, the Commission rightfully excludes cash, foreign currencies (or derivatives thereof), and interest rate swaps from GHG calculations "because these investments do not generate GHG emissions." However, the Proposal does not extend this exclusion to other forms of derivatives that neither generate nor finance emissions, such

[1] Cboe is a global exchange operator and leading innovator in exchange-traded derivatives. Cboe provides trading platforms across a diverse range of products in multiple asset classes and geographies, including options, futures, U.S., Canadian and European equities, exchange-traded products ("ETPs"), global foreign exchange ("FX") and volatility products based on the Cboe Volatility Index ("VIX Index"), recognized as the world's premier gauge of U.S. equity market volatility.

as equity and index options and futures. Instead, under the Proposal, if a fund obtains its exposure to a portfolio company via a derivatives instrument, the derivatives instrument for purposes of the GHG metrics calculations would be treated as an equivalent position in the securities of the portfolio company that are referenced in the derivatives instrument. Cboe's response to the relevant question in the proposal is provided below.

> *112. Is our proposed approach to the calculation of GHG metrics related to derivative instruments appropriate? To what extent do funds that would be subject to this disclosure requirement enter into derivatives? Is the proposed treatment of derivatives appropriate and clear as applied to these derivatives? Alternatively, should we exclude derivatives instruments from the definition of a "portfolio company" or "portfolio holding" so that funds would be not be required to attribute GHG emission to these investments?*

***<u>Derivatives should be excluded from the GHG emissions calculation and disclosure requirements.</u>***

Exchange-traded, centrally cleared options and futures are important risk-management tools that are used to hedge a portfolio's risk or for income generation (among other use cases). Funds are increasingly utilizing derivatives to optimize their portfolios. These derivative products serve investors well when incorporated into a portfolio. Funds that would be subject to the Proposal's disclosure requirement should not be unnecessarily discouraged from incorporating derivatives into their portfolios. Their emissions footprint does not warrant it, and as such, we strongly believe they should be excluded from the GHG emissions calculation and disclosure requirements.

Derivatives positions do not finance emissions. Most derivatives positions do not result in an ultimate ownership position in a company, and some derivatives structurally cannot result in an ownership interest (e.g., cash-settled derivatives). Beyond this it is not evident how derivatives positions contribute to GHG emissions. Cboe is not aware of any standardized, globally accepted methodologies for calculating the GHG emissions of derivatives positions. In addition, the nature of many listed derivative contracts does not map clearly into the envisioned framework. For example, it is unclear how a fund would even calculate GHG emissions of a derivative on an index that is generated from the prices of listed options or futures on a separate index. Any semblance of a connection to actual emissions would surely be too far removed to be of any value to an investor.

Moreover, as others have noted, requiring funds to disclose the GHG emissions associated with derivatives positions will result in unintended consequences. Not only would it likely discourage the use of these important risk-management tools, but it would result in "double counting" emissions since the underlying company's GHG emissions (at least for equity options positions) will have already been disclosed/accounted for by funds that hold equities. It is important to note that many derivatives contracts have a contract multiple that is not a 1:1 ratio to the underlying. This becomes increasingly difficult and burdensome for funds to navigate all while the actual GHG emissions calculation protocol for derivatives remains unclear and will likely not benefit investors by disclosing this information.

Applying the GHG emissions calculation and disclosure requirements to these types of products creates unnecessary complexity and will likely confuse investors. The central purpose of this proposal is to provide relevant information to investors to aid in their investment decisions. Excluding derivatives from the GHG emissions calculation remains consistent with this purpose, as well as the proposed exclusions for cash, foreign currencies and interest rate swaps. We respectfully encourage the Commission to consider our recommendation.

Sincerely,

Angelo Evangelou
Chief Policy Officer
Cboe Global Markets